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APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1967

No. 107

UNITED STATES OF AMERICA, APPELLANT

v.

ARNOLD HABIG AND JEROME SCHROERING

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

FILED APRIL 21, 1967
PROBABLE JURISDICTION NOTED OCTOBER 9, 1967

Supreme Court of the United States

OCTOBER TERM, 1967

No. 107

UNITED STATES OF AMERICA, APPELLANT

v.

ARNOLD HABIG AND JEROME SCHROERING

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FOR THE SOUTHERN DISTRICT OF INDIANA

INDEX

	Page
Docket Entries	1
Indictment	5
Defendants' Motion to Dismiss Counts IV and VI of Indictment	10
District Court's Opinion dated January 23, 1967	11
Notice of Appeal to the Supreme Court dated February 20, 1967	15
Notice of Appeal to the Supreme Court dated February 21, 1967	17
Order noting probable jurisdiction	19

[fol. 1]

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

66CR 138

THE UNITED STATES

vs.

ARNOLD F. HABIG, JEROME M. SCHROERING

CALE J. HOLDER, JUDGE

ATTORNEYS

For U.S.:

United States Attorney

For Defendant:

FRED P. BAMBERGER, 708 Hulman Building, Evansville, Indiana

LESTER M. PONDER, 1313 Merchants Bank Bldg., Indianapolis, Indiana

STATISTICAL RECORD	COSTS
J.S. 2 mailed	Clerk
J.S. 3 mailed	Marshal 6.00
Violation Corporate Tax Evasion.	Docket fee
Title 26	
Sec. 7201—7 counts	

DATE	PROCEEDINGS
8/12/66	Indictment filed; defendants O.R.
8/15/66	Praecipes for summons filed. Summons issued returnable Sept. 9, 1966 at 9:30 A.M.
8/25/66	U.S. Marshal returns summons—as to both defendants served by certified mail on August 17, 1966.

DATE	PROCEEDINGS
9/ 1/66	Defendants file motion for continuance of arraignment date, c/s.
9/30/66	Defendants file motion for continuance of arraignment date, c/s.
10/ 3/66	Court Grants defendants' motion for continuance of arraignment.
[fol. 2]	
10/28/66	Government appears by U.S. Attorney, defendants appear in person and by their privately employed counsel, Fred P. Bamberger and Lester Ponder. Both defendants having been advised of their rights, now state that they thoroughly understand the nature of the charges against them. Being arraigned upon the indictment for plea, both defendants enter pleas of not guilty to all seven counts. This cause will be placed on the next published calendar.
10/31/66	Defendants file certification of service of defendants' motion to dismiss IV and VI of indictment.
11/ 8/66	Government files memorandum in opposition to the defendant's motion to dismiss counts IV and VI of the indictment, c/s.
11/15/66	Defendants file motion for extension of time to file and serve reply brief.
11/17/66	Court approves defendant's motion for extension of time in which to file and serve reply brief and the time is extended to and including November 2.
11/21/66	Defendant Habig files motion to depart jurisdiction, c/s.
11/23/66	Court enters order granting defendant Habig leave to depart from this jurisdiction. (SE). Copy to attorneys.
11/28/66	Defendants file reply brief in support of defendants' motion to dismiss counts IV and VI of indictment, c/s.

DATE	PROCEEDINGS
12/27/66	Parties file stipulation of facts.
1/13/67	Defendants file waiver of evidentiary hearing relating to defendants' motion to dismiss counts IV and VI of indictment. Government also files waiver on above hearing.
1/23/67	Court sustains defendant's motion to dismiss Counts IV and VI of the indictment and the same are hereby dismissed.
2/15/67	Defendants file motion for continuance with no objection.
2/16/67	Court Grants defendant's motion for continuance of this cause from the current calendar and to place it on the fall calendar beginning in September, 1967.
2/20/67	Government files notice of Appeal to the Supreme Court of the United States from the order of January 23, 1967 dismissing Counts IV of the indictment which charged the defendants Arnold F. Habig and Jerome M. Schroering with violating 28 U.S.C. 7201 and 7206 (2).
2/21/67	Government files notice of appeal to the Supreme Court of the United States from the order of January 23, 1967 dismissing Counts VI of the indictment.
[fol. 2A]	
3/20/67	Transcript of record on appeal mailed to Clerk, Supreme Court of the United States, Washington, D. C.
7/21/67	Defendants file motion to defer the trial of this cause to the next term following the October, 1967 term of the U.S. District Court at Indianapolis, U.S. has no objection.
9/ 8/67	Court Grants defendants' motion to defer the trial of this cause to the next term following the October, 1967 term of the U.S. District Court.

DATE	PROCEEDINGS
10/ 4/67	Defendant Habit files motion to depart jurisdiction, c/s.
10/ 5/67	Court Grants defendant Arnold F. Habig's motion to depart jurisdiction of the Court.
10/13/67	Order of the Supreme Court of the United States (No. 107, October Term 1967) received. Order is stated as follows: The statement of jurisdiction in this case (Arnold Habig) et al. having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar—dated October 9, 1967.

[fol. 3]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

INDIANAPOLIS DIVISION

No. IP 66-CR-138

UNITED STATES OF AMERICA

v.

ARNOLD F. HABIG, JEROME M. SCHROERING

INDICTMENT

Count I

The Grand Jury charges:

That on or about the 16th day of September, 1960, ARNOLD F. HABIG, who was the President of The Jasper Corporation and JEROME M. SCHROERING did wilfully and knowingly attempt to evade and defeat a large part of the taxes due and owing by The Jasper Corporation to the United States of America for the fiscal year ended June 30, 1960, by filing and causing to be filed with the District Director of Internal Revenue for the Internal Revenue District of Indianapolis at Indianapolis, Indiana, in the Southern District of Indiana a false and fraudulent tax return wherein it was stated that the taxable income of the corporation for the said fiscal year was the sum of $113,417.44 and that the total amount of tax due thereon was the sum of $53,370.78 whereas, as the defendants then and there well knew, the taxable income of the corporation for the said fiscal year was the sum of $196,108.58, more or less, upon which taxable income the corporation owed to the United States of America a total tax of $96,370.17, more or less, in violation of Section 7201 Internal Revenue Code; 26 U.S.C. Section 7201.

Count II

The Grand Jury further charges:

[fol. 4] That on or about the 16th day of September, 1960, ARNOLD F. HABIG, who was the President of Evansville Veneer and Lumber Company, Inc. and JEROME M. SCHROERING did wilfully and knowingly attempt to evade and defeat a large part of the taxes due and owing by Evansville Veneer and Lumber Company, Inc., to the United States of America for the fiscal year ended June 30, 1960, by filing and causing to be filed with the District Director of Internal Revenue for the Internal Revenue District of Indianapolis at Indianapolis, Indiana, in the Southern District of Indiana a false and fraudulent tax return wherein it was stated that the taxable income of the corporation for the said fiscal year was the sum of $93,372.62 and that the total amount of tax due thereon was the sum of $43,053.76 whereas, as the defendants then and there well knew, the taxable income of the corporation for the said fiscal year was the sum of $280,185.62, more or less, upon which taxable income the corporation owed to the United States of America a total tax of $140,196.52, more or less, in violation of Section 7201 Internal Revenue Code; 26 U.S.C. Section 7201.

Count III

The Grand Jury further charges:

That on or about the 16th day of September, 1960, ARNOLD F. HABIG, who was the President of Borden Cabinet Corporation and JEROME M. SCHROERING did wilfully and knowingly attempt to evade and defeat a large part of the taxes due and owing by Borden Cabinet Corporation to the United States of America for the fiscal year ended June 30, 1960, by filing and causing to be filed with the District Director of Internal Revenue for the Internal Revenue District of Indianapolis at Indianapolis, Indiana, in the Southern District of Indiana a false and fraudulent tax return wherein it was stated that the taxable income of the corporation for the said

fiscal year was the sum of $55,939.33 and that the total amount of tax due thereon was the sum of $23,588.45 whereas, as the defendants then and there well knew, the taxable income of the corporation for the said fiscal year was the sum of $131,133.73, more or less, upon which [fol. 5] taxable income the corporation owed to the United States of America a total tax of $62,689.53, more or less, in violation of Section 7201 Internal Revenue Code; 26 U.S.C. Section 7201.

Count IV

The Grand Jury further charges:

That on or about the 15th day of August, 1960, ARNOLD F. HABIG who was the President of Gordonsville Manufacturing Company, Inc. and JEROME M. SCHROERING did wilfully and knowingly attempt to evade and defeat a large part of the taxes due and owing by Gordonsville Manufacturing Company, Inc. to the United States of America for the fiscal period beginning March 7, 1959 and ending February 29, 1960, by filing and causing to be filed with the District Director of Internal Revenue for the Internal Revenue District of Indianapolis at Indianapolis, Indiana, in the Southern District of Indiana a false and fraudulent tax return wherein it was stated that the taxable income of the corporation for the said fiscal period was the sum of $30,235.76, and that the total amount of tax due thereon was the sum of $10,222.60 whereas, as the defendants then and there well knew, the taxable income of the corporation for the said fiscal period was the sum of $71,965.64, more or less, upon which taxable income the corporation owed to the United States of America a total tax of $31,922.13, more or less, in violation of Section 7201 Internal Revenue Code; 26 U.S.C. Section 7201.

Count V

The Grand Jury further charges:

That on or about the 16th day of September, 1960, ARNOLD F. HABIG, who was the President of Gordonsville Manufacturing Company, Inc. and JEROME M.

SCHROERING did wilfully and knowingly attempt to evade and defeat a large part of the taxes due and owing by Gordonsville Manufacturing Company, Inc. to the United States of America for the short fiscal period beginning March 1, 1960 and ending June 30, 1960, by filing and causing to be filed with the District Director of Internal Revenue for the Internal Revenue District of [fol. 6] Indianapolis at Indianapolis, Indiana, in the Southern District of Indiana a false and fraudulent tax return wherein it was stated that the taxable income of the corporation for the said short fiscal period was the sum of $17,831.68 and that the total amount of tax due thereon was the sum of $7,439.14 whereas, as the defendants then and there well knew, the taxable income of the corporation for the said short fiscal period was the sum of $61,341.18, more or less, upon which taxable income the corporation owed to the United States of America a total tax of $30,064.08, more or less, in violation of Section 7201 Internal Revenue Code; 26 U.S.C. Section 7201.

Count VI

The Grand Jury further charges:

That on or about the 12th day of August, 1960, in the Southern District of Indiana, ARNOLD F. HABIG, President of W. W. Kimball Company and JEROME M. SCHROERING, did wilfully and knowingly aid and assist in, and counsel, procure, and advise the preparation and presentation to the District Director of Internal Revenue for the Internal Revenue District of Chicago, at Chicago, Illinois, of an income tax return of W. W. Kimball Company, a corporation, for the fiscal year ended February 29, 1960, which was false and fraudulent as to a material matter in that it represented that the W. W. Kimball Company had gross receipts for said fiscal year in the sum of $5,900,886.09 whereas, as the defendants then and there well knew, the said W. W. Kimball Company had gross receipts of $5,604,191.28 for said fiscal year in violation of Section 7206(2) Internal Revenue Code; 26 U.S.C., Section 7206(2).

Count VII

The Grand Jury further charges:

That on or about the 15th day of September, 1960, in the Southern District of Indiana, ARNOLD F. HABIG, President of W. W. Kimball Company and JEROME M. SCHROERING, did wilfully and knowingly aid and assist in, and counsel, procure, and advise the preparation and presentation to the District Director of Internal Revenue [fol. 7] for the Internal Revenue District of Chicago, at Chicago, Illinois, of an income tax return of W. W. Kimball Company, a corporation, for the short fiscal period beginning March 1, 1960 and ending June 30, 1960, which was false and fraudulent as to a material matter in that it represented that the W. W. Kimball Company had gross receipts for said short fiscal period in the sum of $1,882,-445.68, whereas, as the defendants then and there well knew, the said W. W. Kimball Company had gross receipts of $1,749,202.57 for said short fiscal period in violation of Section 7206(2) Internal Revenue Code; 26 U.S.C. Section 7206(2).

A TRUE BILL

.....

Foreman

.....

United States Attorney

[fol. 9]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

No. IP 66-CR-138
Filed 10/28/66

UNITED STATES OF AMERICA

v.

ARNOLD F. HABIG, JEROME M. SCHROERING

DEFENDANTS' MOTION TO DISMISS COUNTS IV AND VI OF INDICTMENT

The defendants, by counsel, move the Court to dismiss Counts IV and VI of the Indictment on the ground that the United States is without jurisdiction to prosecute, and the Court is without jurisdiction to try the defendants for the offenses therein charged because the applicable periods of limitation have run.

/s/ Fred P. Bamberger
FRED P. BAMBERGER
BAMBERGER, FOREMAN, OSWALD AND HAHN
708 Hulman Building
Evansville, Indiana
425-1591

/s/ Lester M. Ponder
LESTER M. PONDER
BARNES, HICKAM, PANTZER & BOYD
1313 Merchants Bank Building
Indianapolis, Indiana
638-1313

/s/ Anton Dimitroff
ANTON DIMITROFF
BARNES, HICKAM, PANTZER & BOYD
1313 Merchants Bank Building
Indianapolis, Indiana
638-1313

[fol. 56]

APPENDIX A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

INDIANAPOLIS DIVISION

No. IP 66-CR-138

Received, Jan. 24, 1967, U. S. Attorney, Indianapolis, Ind.

UNITED STATES OF AMERICA

vs.

ARNOLD F. HABIG, JEROME M. SCHROERING

ENTRY

The above entitled action came before the Court for ruling on defendants' Motion to Dismiss Counts IV and VI of Indictment and brief in support thereof filed October 28, 1966, the government's memorandum in opposition thereto filed November 8, 1966, plaintiff's reply brief filed November 28, 1966, Stipulation of Facts filed December 27, 1966, and the government's and defendants' waiver of an evidentiary hearing and argument filed January 13, 1967. The Court being duly advised in the matter now finds:

1. That Count IV of the indictment charges that on or about August 15, 1960 the defendants filed and caused to be filed a false and fraudulent tax return on behalf of Gordonsville Manufacturing Company Inc.

2. That Count VI of the indictment charges that on or about August 12, 1960 the defendants did wilfully and knowingly aid and assist in, and counsel, procure and advise the preparation and presentation of a false and fraudulent tax return on behalf of W. W. Kimball Company.

3. That the companies on whose behalf the fraudulent tax returns were allegedly filed had fiscal taxable years ending on the last day of the month of February 1960.

[fol. 57] 4. That the prescribed date for filing the tax returns allegedly filed by the defendants on behalf of Gordonsville Manufacturing Company Inc. and W. W. Kimball Company was May 15, 1960.

5. That the Gordonsville Manufacturing Company Inc. received a three month extension for the filing of its tax return on May 16, 1960 by filing an application therefore with the Director of Internal Revenue, Indianapolis, Indiana, on May 16, 1960, and that the W. W. Kimball Company received a three month extension for the filing of its tax return on May 9, 1960 by filing an application therefore with the District Director of Internal Revenue, Chicago, on May 9, 1960.

6. That the tax return allegedly filed by the defendants on behalf of Gordonsville Manufacturing Company Inc. was filed with the Director of Internal Revenue, Indianapolis, Indiana, August 15, 1960, and that the tax return allegedly procured by the defendants on behalf of W. W. Kimball Company was filed with the District Director of Internal Revenue, Chicago, Illinois, on August 12, 1960.

7. That the indictment in this action was returned August 12, 1966.

IT IS THEREFORE ORDERED AND ADJUDGED that the defendants' Motion to Dismiss Counts IV and VI of Indictment is SUSTAINED and that Counts IV and VI of the indictment be and are hereby dismissed. The period of limitations for the offenses charged in Counts IV and VI of the indictment is six (6) years. Title 26 U.S.C.A. Section 6531. For the purpose of determining the period of limitation on criminal prosecutions, the rules of Section 6513 are applicable Title 26 U.S.C.A. Section 6531. Title 26 U.S.C.A. Section 6513 states that "For the purposes of this subsection, the last [fol. 58] day prescribed for filing the return or paying the tax shall be determined without regard to any extension of time granted the taxpayer * * *". Therefore, the question presented by the Motion to Dismiss is whether the indictment in Counts IV and VI was returned beyond the period of limitations. If the returns in question are

deemed to be filed on the date they were actually received, then the indictment on Counts IV and VI is not defective, for it was returned within the six (6) year period of limitations from those dates. However, such a construction is unacceptable in light of the statutory authority quoted above. The statutory mandate is clear—for the purpose of criminal prosecutions, the last day prescribed for filing shall be determined without regard to any extension of time granted the taxpayer. The last day prescribed for filing the returns in question was May 15, 1960 and the indictment was returned August 12, 1966 which is clearly beyond the six (6) year statute of limitations. The government has proposed the theory that a taxpayer who is given the benefit of an extension of time acquires a new due date. Even if this were so, it would not remedy the defect in Count IV of the indictment, for Gordonsville Manufacturing Company Inc. did not receive an extension until May 16, 1960. The statute of limitations necessarily began to run on the original due date of May 15, 1960. The Court cannot, in any case, accept the government's construction of Section 6513 for it is based upon a consideration of sections concerning civil claims for credits or refunds of which it is admittedly a part. However, Congress by Section 6531 for the sole purpose of determining the period of limitations in criminal prosecutions adopted only Section 6513. This Congress had a right to do. The statute is not ambiguous, and therefore leaves no room for construction. As was stated in *Hull* v. *United States*, 356 F.2d 919 (5th Cir. 1966), "The statute seems clear to the effect that returns [fol. 59] are deemed to have been filed and wilfull acts of (sic) omissions committed on the last date prescribed for the filing of returns irrespective of extensions of time granted * * *". Judge Steckler, Chief Judge of this Court, in the case of United States v. Sheety, 224 F.Supp. 789 (S.D.Ind. 1963) made a similar finding. In that case the Court construed Section 6531 and Section 6513(a) and held that the date of the offense is considered to be the date prescribed for filing. The Court went on to say that it considered itself bound "by the clear language"

of the statutes. This Court can find no reason to deviate from that construction.

Dated this 23 day of January, 1967.

CALE J. HOLDER
CALE J. HOLDER,
Judge,
United States District Court
Southern District of Indiana

[fol. 60]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

INDIANAPOLIS DIVISION

No. IP 66-CR-138

Filed, Feb. 20, 2:43 P.M., '67, Robert G. Newbold, Clerk

UNITED STATES OF AMERICA

v.

ARNOLD F. HABIG, JEROME M. SCHROERING

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

I. Notice is hereby given that the United States appeals to the Supreme Court of the United States from the order of January 23, 1967, dismissing Counts IV of the indictment which charged the defendants Arnold F. Habig and Jerome M. Schroering with violating 28 U.S.C. 7201 and 7206(2).

This appeal is taken pursuant to 18 U.S.C. 3731.

II. The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include therein the following:

1. Transcript of docket entries
2. Indictment
3. Motions to dismiss the indictment
4. Memorandum of defendants in support of motion to dismiss indictment
5. Plaintiff's response to defendants' motions to dismiss.
6. Defendants' reply to plaintiff's response.
7. Memorandum of decision, order and judgment granting defendants' motion to dismiss Counts IV and VI of the indictment (dated January 23, 1967)
8. This notice of appeal

III. The following question is presented by this appeal:

[fol. 61] Whether the six-year period of limitations provided for criminal prosecutions by Section 6531 of the Internal Revenue Code of 1954 began to run on the date the returns were filed in August, 1960, or on the last day prescribed by the Code for filing the returns—May 15, 1960—in view of the provisions of Section 6513 of the Code.

Dated at Indianapolis, Indiana, this 20th day of February, 1967.

/s/ Richard P. Stein
RICHARD P. STEIN
United States Attorney
Southern District of Indiana

This is to certify that a copy of the foregoing Notice of Appeal has been mailed to Fred P. Bamberger, Bamberger, Foreman, Oswald and Hahn, 708 Hulman Building, Evansville, Indiana, and to Lester M. Ponder, Barnes, Hickam, Pantzer & Boyd, 1313 Merchants Bank Building, Indianapolis, Indiana, counsel for the defendants, this 20 day of February, 1967.

/s/ Richard P. Stein
RICHARD P. STEIN
United States Attorney
Southern District of Indiana

[fol. 62]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

INDIANAPOLIS DIVISION

No. IP 66-CR-138

Filed, Feb. 21, 4:22 P.M., '67, Robert G. Newbold, Clerk

UNITED STATES OF AMERICA

v.

ARNOLD F. HABIG, JEROME M. SCHROERING

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

I. Notice is hereby given that the United States appeals to the Supreme Court of the United States from the order of January 23, 1967, dismissing Counts VI of the indictment which charged the defendants Arnold F. Habig and Jerome M. Schroering with violating 28 U.S.C. 7201 and 7206(2).

This appeal is taken pursuant to 18 U.S.C. 3731.

II. The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include therein the following:

1. Transcript of docket entries
2. Indictment
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4. Memorandum of defendants in support of motion to dismiss indictment.
5. Plaintiff's response to defendants' motions to dismiss.
6. Defendants' reply to plaintiff's response.
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8. This notice of appeal

III. The following question is presented by this appeal:

Whether the six-year period of limitations provided for criminal prosecutions by Section 6531 of the Internal Revenue Code of 1954 began to run on the date the returns were filed in August, 1960, or on the last day prescribed by the Code for filing the returns—May 15, 1960—in view of the provisions of Section 6513 of the Code.

Dated at Indianapolis, Indiana, this 21 day of February 1967.

/s/ Richard P. Stein
RICHARD P. STEIN
United States Attorney

This is to certify that a copy of the foregoing Notice of Appeal has been mailed to Fred P. Bamberger, 708 Hulman Bldg., Evansville, Indiana and to Lester M. Ponder, 1313 Merchants Bank Bldg., Indianapolis, Indiana on this 21 day of February 1967.

/s/ Richard P. Stein
RICHARD P. STEIN
United States Attorney

[fol. 64]

SUPREME COURT OF THE UNITED STATES

No. 107, October Term, 1967

UNITED STATES, APPELLANT

v.

ARNOLD HABIG, ET AL.

APPEAL from the United States District Court for the Southern District of Indiana.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.

October 9, 1967

Mr. Justice Marshall took no part in the consideration or decision of this case.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1967 280809 359